IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.115 OF 2004

Shri Motiram Ramchandra Kolhe & Ors.	...	Applicants
Vs.		
Shri Malhari Ragho Mahale & Ors.	...	Respondents

Mr. M.S. Karnik for the applicants.

Mr. U.B. Nighot for respondents 1 and 2.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND FEBRUARY, 2005.

P.C.:-

1. Leave to amend. Amendment to be carried out forthwith.

2. The applicants have challenged in this revision application, order dated 27/5/2004 passed by the Sub-Divisional Officer, Niphad in RTS/Appeal/252/03 filed by the applicants challenging the order dated 17/11/2003 passed by the Tahasildar, Niphad in Case No.20 of 2003. The applicants own the property bearing Gut No.44 at Mouje Khede, Taluka Niphad, District Nasik. The respondents own property bearing Gut No.41, Mouje Khede, Taluka Niphad, District Nasik. The grievance is about right of way. The respondents claim to have a right of way through Gut No.44. The grievance of the respondents

is that the applicants obstructed their right of way. Therefore, they filed Case No.20 of 2003 before the Tahasildar, Niphad. The Tahasildar, Niphad held that the respondents have a right of way. The appeal filed against the said order was dismissed and, hence, this civil revision application.

3. I have heard the learned counsel appearing for the applicants. He contended that both the courts have relied merely on a panchanama. He contended that it was an error to rely on the panchanama, the contents of which are denied by the panchas. The learned counsel also pointed out that the applicants had made a grievance that the Tahasildar before whom the case was filed by the applicants is biased against the applicants and, hence, the case may be transferred from the Tahasildar, Niphad to some other Tahsildar. On 17/11/2003, an order was passed by the S.D.O., transferring the case to Tahasildar, Yeola. However, on the very day, the Tahasildar of Niphad, in breach of the order of 17/11/2003 passed by the S.D.O., heard Case No.20 of 2003 and decided it.

4. The learned counsel appearing for the respondents, on the other hand, contended that the concurrent finding of fact is unassailable and does not deserve to be disturbed.

5. In my opinion, if there was an order directing the Tahasildar, Yeola to decide the applicants' case, it was improper for the Tahasildar, Niphad to proceed with the case particularly, when the allegations were that he was biased. In view of this without expressing any opinion on the merits of the case, I am of the opinion that the impugned orders need to be set aside and the matter needs to be remanded. I am informed that the Tahasildar, Niphad, who was directed not to hear the matter is now transferred. The learned counsel for the applicants has no objection if the case is now remanded to the present Tahasildar, Niphad. In view of this, I pass the following order.

6. The impugned order dated 27/5/2004 passed by the Sub-Divisional Officer, Niphad in RTS/Appeal/252/03 filed by the applicants challenging the order dated 17/11/2003 passed by the Tahasildar, Niphad in Case No.20 of 2003 is set aside. The matter is remanded to the Tahasildar, Niphad with a direction that the Tahasildar, Niphad should re-hear the matter after giving opportunities to both sides and after carrying out a fresh panchanama. The Tahasildar, Niphad, shall hear and dispose of the case within a period of six weeks from the date of receipt of this order by him. In the meantime, the applicants shall not obstruct the respondents. It is clarified, however, that this order is not passed after considering the merits of the case.

7. The civil revision application is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)